

Message Text

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SUBJECT: ESCAP COMMITTEE ON INDUSTRY, HOUSING, AND
TECHNOLOGY

REF: STATE 212320

1. FOLLOWING REVISED POSITION PAPER FOR AGENDA ITEM
6(A)(V) (SEMINAR ON FOREIGN INVESTMENT AND TAX ADMINISTRA-
TION) IS PROVIDED FOR DELEGATION TO SUBJECT ESCAP MEETING.

2. BEGIN TEXT:

A. PROBLEM: THE COMMITTEE WILL CONSIDER THE REPORT OF
THE SEMINAR ON FOREIGN INVESTMENT AND TAX ADMINISTRATION,
INCLUDING A RESOLUTION PROPOSED BY THE SEMINAR, DOCUMENT
IHT/6 DATED 20 JUNE 1975.

B. RELATIVE IMPORTANCE OF THE ISSUE TO THE UNITED STATES:
PROMOTION OF A FAVORABLE CLIMATE FOR INVESTMENT AROUND THE
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WORLD AS DETAILED BELOW IS A MAJOR OBJECTIVE OF THE UNITED
STATES.

C. UNITED STATES POSITION:

(1) DELEGATION SHOULD EXPRESS U.S. AGREEMENT WITH SEMINAR'S OVERALL CONCLUSION (PARA. 57 AND ELSEWHERE) THAT INFLOWS OF FOREIGN INVESTMENT ARE DESIRABLE AND NECESSARY TO ASSIST DEVELOPING COUNTRIES IN ACCELERATING THEIR ECONOMIC DEVELOPMENT, AND WITH MOST OF THE MEASURES FOR DEALING WITH FOREIGN INVESTMENTS DISCUSSED IN THE REPORT (FOR EXAMPLE, THOSE PROPOSED UNDER "ADMINISTRATIVE AND INSTITUTIONAL REQUIREMENTS TO FOSTER FOREIGN INVESTMENTS" (PARAS 50-55); ALSO PARAS. 59, 62, 64, 65).

(2) DELEGATION SHOULD AT THE SAME TIME NOTE THAT, EXCEPT FOR CERTAIN MEASURES SUCH AS OPIC DESIGNED TO ENCOURAGE INVESTMENT IN LDCS, BASIC U.S. POLICY TOWARDS FOREIGN INVESTMENT IS ONE OF NEUTRALITY, MINIMIZING SPECIAL INCENTIVES AND DISINCENTIVES TO INVESTMENT WHICH HINDER THE OPERATION OF COMPETITIVE MARKET FORCES IN DETERMINING THE MOST PRODUCTIVE USE OF CAPITAL, TECHNOLOGY, ETC. HENCE, ALTHOUGH THE UNITED STATES CERTAINLY SUPPORTS THE RIGHT OF EACH COUNTRY TO REGULATE BUSINESS ACTIVITY WITHIN ITS BORDERS (PARA. 58), IT DOES NOT BELIEVE THAT SCREENING (PARAS. 58, 66), DISCRIMINATION IN FAVOR OF DOMESTIC AS AGAINST FOREIGN INVESTORS (PARA. 60), OR FADE-OUT RULES (PARA. 63) ARE NECESSARILY ADVISABLE OR APPROPRIATE AS GENERAL PRACTICE IN DEALING WITH FOREIGN INVESTMENT. WHERE CONSIDERED, SUCH MEASURES SHOULD BE CAREFULLY REVIEWED TO ASSURE THAT THEY WILL NOT DETER DESIRABLE INVESTMENTS.

(3) DELEGATION SHOULD POINT TO THE COST OF DATA BANKS AND THE RISK OF DUPLICATION, AND STATE THAT IN OUR VIEW THE DATA BANK ON TECHNOLOGY (PARA 67) SHOULD BE PART OF THE FEASIBILITY STUDY ON A CENTER FOR TRANSFER OF TECHNOLOGY PROPOSED FOR DELHI BY THE 31ST COMMISSION.

(4) WITH REGARD TO TAXATION OF FOREIGN INVESTMENT (PARAS. 68-70), THE UNITED STATES AGREES THAT DOUBLE UNCLASSIFIED

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TAXATION CAN HINDER FOREIGN INVESTMENT AND THEREFORE IS PREPARED TO NEGOTIATE DOUBLE TAXATION TREATIES WITH COUNTRIES WHERE THIS PROBLEM EXISTS.

(5) AS REGARDS SEMINAR'S RESOLUTION RECOMMENDING THAT ESCAP ESTABLISH A FORUM FOR EXAMINATION OF INTERNATIONAL INVESTMENT AND TAX MATTERS, DELEGATION SHOULD NOTE THAT RESOLUTION 1961 (LIX) ADOPTED BY 59TH ECOSOC IN JUNE 1975 REQUESTS THE SECRETARY-GENERAL TO ESTABLISH JOINT LIAISON AND SUPPORT UNITS IN EACH OF THE REGIONAL COMMISSIONS TO WORK WITH THE UN INFORMATION AND RESEARCH CENTER ON TRANSNATIONAL CORPORATIONS IN FULFILLMENT OF THE PROGRAM OF WORK ESTABLISHED FOR IT BY THE

COMMISSION ON TRANSNATIONAL CORPORATIONS AND ECOSOC. DELEGATION SHOULD EXPRESS EXPECTATION THAT ESCAP JOINT LIAISON AND SUPPORT UNIT WILL BE ABLE TO DEAL WITH INVESTMENT AND TAX MATTERS REFERRED TO IN SEMINAR'S RECOMMENDATION, AND OPPOSE CREATION OF ADDITIONAL NEW BODY AS UNNECESSARY.

D. DISCUSSION:

(1) THE THRUST OF THE SEMINAR WAS TO EXPLORE WAYS AND MEANS TO ENCOURAGE FOREIGN INVESTMENT. U.S. RELATIONS WITH DEVELOPING COUNTRIES CAN NO LONGER BE DEFINED PRIMARILY IN TERMS OF AID PROGRAMS. US ECONOMIC POLICY TOWARD DEVELOPING COUNTRIES REFLECTS A GROWING RECOGNITION THAT ALL NATIONS BENEFIT FROM A MORE OPEN AND EQUITABLE INTERNATIONAL ECONOMIC SYSTEM. SOME COUNTRIES RESTRICT INWARD CAPITAL MOVEMENTS TO ENSURE DOMESTIC CONTROL OVER INDUSTRIES WHICH THEY CONSIDER IMPORTANT TO THEIR NATIONAL SECURITY OR ECONOMIC DEVELOPMENT. BEYOND THAT, SOME COUNTRIES HAVE INTRODUCED RESTRICTIONS ON DIRECT INVESTMENT FOR THE PURPOSE OF LIMITING THE DEGREE OF FOREIGN CONTROL OVER THEIR DOMESTIC INDUSTRIES. OVER

THE PAST FEW YEARS, THERE HAS BEEN A RESURGENCE OF A TENDENCY IN SOME DEVELOPING COUNTRIES TOWARD EXPROPRIATION AND PARTIAL EXPROPRIATION OF FOREIGN INVESTMENTS WITHOUT ADEQUATE COMPENSATION.

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(2) AS THE LARGEST INVESTOR IN THE DEVELOPING COUNTRIES, THE UNITED STATES HAS CONSISTENTLY FOLLOWED A POLICY OF ENCOURAGING ITS BUSINESSMEN TO INVEST IN THE DEVELOPING COUNTRIES WHICH NEED AND WANT MORE FOREIGN CAPITAL. THE OVERSEAS PRIVATE INVESTMENT CORPORATION PROMOTES SUCH INVESTMENT BY OFFERING POLITICAL-RISK INSURANCE COVERING U.S. INVESTORS AGAINST EXPROPRIATION, INCONVERTIBILITY, AND WAR RISK, BY GUARANTEEING LOANS MADE BY COMMERCIAL CREDITORS TO U.S. INVESTORS, AND SOMETIMES BY DIRECT LENDING.

(3) U.S. POLICY TOWARD INVESTMENT EXPROPRIATION PROBLEMS IS CONSISTENT WITH ACCEPTED PRINCIPLES OF INTERNATIONAL LAW ON EXPROPRIATORY ACTS--I.E., AN INSISTENCE THAT THE TAKING OF PRIVATE PROPERTY BE NONDISCRIMINATORY AND FOR A PUBLIC PURPOSE AND THAT U.S. CITIZENS RECEIVE PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION. HOST COUNTRIES HAVE THE RIGHT TO SET THE GROUND RULES UNDER WHICH THEY WILL ACCEPT FOREIGN PRIVATE INVESTMENT; THE INVESTOR CAN THEN MAKE UP HIS OWN MIND ON WHETHER HE LIKES THE RULES OR PREFERS TO GO ELSEWHERE. BUT ONCE THE RULES ARE

LAI D DOWN AND THE INVESTMENT MADE, THE HOST COUNTRY HAS
AN OVERRIDING OBLIGATION TO LIVE UP TO ITS OWN RULES OR
MAKE FULL AND FAIR COMPENSATION IF IT DEEMS A RULE CHANGE
NECESSARY. WE ARE PLEASED THAT THE MEMBERS OF THE
SEMINAR CAME TO SIMILAR CONCLUSIONS. KISSINGER

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<< END OF DOCUMENT >>

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